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In re Application of :
Shaffer et al. :
Application No. 10/699,534 :
Filed: October 31, 2003 :
Attorney Docket No. 25247B :

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 6, 2006, to revive the above-identified application.

On November 7, 2005, the Office mailed a Notice of Allowance and Fee(s) Due, which indicated the due date for payment of the issue fee as February 7, 2006. In the absence of the timely payment of the issue fee, the application became abandoned on February 8, 2006. On April 6, 2006, the Office mailed a Notice of Abandonment. On April 24, 2006, petitioner filed a petition under 37 CFR 1.137(a), a completed Part B - Fee(s) Transmittal, and an authorization to charge the Deposit Account for the requisite fees. The petition was dismissed by the decision of September 6, 2006. On October 6, 2006, petitioner filed the present petition under 37 CFR 1.137(b).

The petition is **DISMISSED**.

The petition under 37 CFR 1.137(b) will not be treated on its merits, but rather will remain in the file until the United States Patent and Trademark Office (Office) receives a renewed petition under 37 CFR 1.137(b), as well as the payment of the requisite petition fee of \$1,500.00, the amount due on the filing of the petition.¹

The Office notes:

35 U.S.C. 41(a)(7) provides that a petition for revival of an unintentionally abandoned application . . . must be accompanied by a petition fee set for in 37 CFR 1.17(m), unless the petition is filed under 35 U.S.C. 133 or 151 (on the basis of unavoidable delay), in which case the fee is set forth in 37 CFR 1.17(l). Thus, unless the circumstances warrant the withdrawal of the holding abandonment (i.e., it is determined that the application is

¹ Petitioner's Deposit Account does not contain sufficient funds to pay the total amount of the petition fee.

not properly held abandoned), the payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application, and cannot be waived.

MPEP 711.03(c)(III)(B).

Accordingly, the Office lacks the discretion to, and will not, address the merits of any petition seeking revival of an abandoned application in the absence of the payment of the petition fee required by statute. In this regard, this application is properly considered abandoned by operation of 35 USC § 133 for failure to prosecute.

A request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Further correspondence with respect to this matter should be addressed as follows and **to the attention of Senior Petitions Attorney Christina Tartera Donnell:**

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571) 273-8300
Attn: Office of Petitions

By hand: Customer Service Window
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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

C.T. Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions